

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Laurel Jean Joseph
SSN XXX-XX-0109

CASE NO. 04-32131 DDO

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. GMAC Mortgage Corporation (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 27, 2004, at 9:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Dennis D. O'Brien in Courtroom 228A of the above entitled Court located at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than September 22, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than September 16, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on April 7, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001.

This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1. Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$37,900.00, as evidenced by that certain Promissory Note dated May 24, 1994, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated May 24, 1994, executed by Laurel J. Joseph, a single person, recorded on July 13, 1994, as Document No. 1228614, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B". The property is located in Dakota County, Minnesota and is legally described as follows to-wit:

Residential Unit No. 7, Condominium No. 38, Westview Park Condominium.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of September 7, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of May, 2004 through September, 2004, inclusive, in the amount of \$292.18 each; accruing attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

11. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 7th day of September 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

94-0-202-113218

1228614

RETURN TO: GMAC MORTGAGE CORPORATION OF PA
11455 VIKING DRIVE #200
EDEN PRAIRIE, MN 55344

[Space Above This Line]

OFFICE OF THE COUNTY RECORDER
DAKOTA COUNTY, MINNESOTA
CERTIFIED THAT THE WITHIN INSTRUMENT
WAS RECORDED IN THIS OFFICE ON AND AT

JUL 13 12 05 PM '94

1228614

DOC. NO. JAMES N. DOLAN, COUNTY RECORDER

BY: *cc* Deputy

FEE 15.00 SURCHARGE 4.50

CASH ☐ CHECK ☐ ESCROW ☐WELL ☐ CHARGE ☐

CHARGE TO: REFUND

DO NOT REMOVE

1228614

FIRST SECURITY TITLE

MORTGAGE

LOAN # 4-325122-01

THIS MORTGAGE ("Security Instrument") is given on MAY 24, 1994. The mortgagor is
LAUREL J. JOSEPH, A SINGLE PERSON

("Borrower"). This Security Instrument is given to GMAC MORTGAGE CORPORATION OF PA

COUNTY CONSERVATION FEE \$6.00

which is organized and existing under the laws of PENNSYLVANIA
address is 8360 OLD YORK ROAD, ELKINS PARK, PA 19117-1590

THOMAS V. NOVAK, and whose
DAKOTA COUNTY TREASURER

("Lender"). Borrower owes Lender the principal sum of
THIRTY-SEVEN THOUSAND NINE HUNDRED AND 00/100

Dollars (U.S. \$ 37,900.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on JUNE 01, 2024. The interest rate on the debt is the yearly rate of 6.500 percent. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower hereby mortgages, grant and convey to Lender, with power of sale, the following described property located in DAKOTA Minnesota:

RESIDENTIAL UNIT NO. 7, CONDOMINIUM NO. 38, WESTVIEW PARK CONDOMINIUM

6-24-94
Notarized before me at
St. Paul, Minnesota, on June 24, 1994
Thomas V. Novak
County Treasurer
Norman B. Marsh
County Auditor

which has the address of 255 WESTVIEW DRIVE #114 WEST ST. PA [Street, City]
Minnesota 55118 (Zip Code) ("Property Address"):

MINNESOTA - Single Family - FNMA/FHLMC UNIFORM INSTRUMENT

GMACM - CMS.0021.MN (9402)

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Form 3024-9/90 Initials: *cc*

062094

EXHIBIT *A*

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Laurel Jean Joseph
SSN XXX-XX-0109

CASE NO. 04-32131 DDO

Debtor.

**MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY**

ARGUMENT

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of September 7, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of May, 2004 through September, 2004, in the amount of \$292.18 each; accruing attorneys fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

The property is also subject to a lien in favor of Westview park Condo Association, Inc. in excess of \$5,502.00.

Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to relief from the automatic stay. See In re Taylor, 151 B.R. 646 (E.D.N.Y., 1993) and In re Davis, 64 B.R. 358 (Bkrcty.

S.D.N.Y., 1986).

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected.

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 7th day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

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SSN XXX-XX-0109

CASE NO. 04-32131 DDO

**AFFIDAVIT OF
FELICIA ROBY**

Debtor.

Felicia Roby, being first duly sworn on oath, deposes and states:

1. That she is the Bankruptcy Specialist of GMAC Mortgage Corporation.

2. GMAC Mortgage Corporation, is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated May 24, 1994, executed by Laurel J. Joseph, a single person, recorded July 13, 1994, as Document No. 1228614. The property is located in Dakota County, Minnesota and is legally described as follows, to-wit:

Residential Unit No. 7, Condominium No. 38, Westview Park Condominium.

3. That she has reviewed the account records relating to the Joseph mortgage loan, account no. 0450293964.

4. That as of August 31, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$32,793.68
Interest through August 31, 2004	2,348.28
Attorney's Fees:	700.00
Non-Escrow Advances:	601.56
Escrow Balance:	397.79

TOTAL: \$36,841.31

5. That the mortgage loan is delinquent for post-petition monthly mortgage payments for the months of May, 2004 through August, 2004 in the amount of \$292.18 each.

6. This affidavit is given in support of the motion of GMAC Mortgage Corporation for relief from the automatic stay.

GMAC MORTGAGE CORPORATION

By Felicia Roby
Its Bankruptcy Specialist

Subscribed and sworn to before me
this 31 day of August, 2004.

Lori A. Marsden
Notary Public

NOTARIAL SEAL
LORI A. MARSDEN, Notary Public
Horsham Twp., Montgomery County
My Commission Expires Oct. 10, 2005

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Laurel Jean Joseph
SSN XXX-XX-0109

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Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Joanna Cheyka, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Ste 300, Woodbury, Minnesota, declares that on September 7, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Felicia Roby, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Laurel J. Joseph
255 Westview Drive
Townhome 114
West St. Paul, MN 55118

Jasmine Z. Keller
12 S 6th St Ste 310
Minneapolis, MN 55402

Curtis K. Walker
4356 Nicollet Ave S
Minneapolis, MN 55409

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

Westview Park Condo Association, Inc.
c/o Paul Livgard
2520 University Ave E Ste 202
Minneapolis, MN 55414

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 7th day of September, 2004.

/e/ Joanna Cheyka
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Laurel Jean Joseph
SSN XXX-XX-0109

CHAPTER 13 CASE

CASE NO. 04-32131 DDO

Debtor.

ORDER

The above entitled matter came on for hearing upon motion of GMAC Mortgage Corporation (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on September 27, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota. Appearances were as noted in the record. The Chapter 13 Trustee filed her Report of Standing Trustee in response to this motion. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated May 24, 1994, executed by Laurel J. Joseph, a single person, recorded on July 13, 1994, as Document No. 1228614 covering real estate located in Dakota County, Minnesota, legally described as follows, to-wit:

Residential Unit No. 7, Condominium No. 38, Westview Park Condominium

and may pursue its remedies under state law in connection with the subject note and mortgage deed. Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: _____
Judge of Bankruptcy Court